

107TH CONGRESS
2D SESSION

S. 2707

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide comprehensive pension protection for women.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2002

Mr. KENNEDY (for himself and Ms. SNOWE) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide comprehensive pension protection for women.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Women’s Pension Protection Act of 2002”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—SPOUSAL CONSENT REQUIRED FOR DISTRIBUTIONS FROM DEFINED CONTRIBUTION PLANS

Sec. 101. Application of joint and survivor annuity rules to all defined contribu-
tion plans.

TITLE II—DIVISION OF PENSION BENEFITS UPON DIVORCE

- Sec. 201. Treatment of subsequent qualified domestic relations orders.
 Sec. 202. Former spouses treated as surviving spouses in certain cases.

TITLE III—PROTECTION OF RIGHTS OF FORMER SPOUSES TO PENSION BENEFITS UNDER CERTAIN GOVERNMENT AND GOVERNMENT-SPONSORED RETIREMENT PROGRAMS

Subtitle A—Civil Service Retirement

- Sec. 301. Survivor annuities for widows, widowers, and former spouses of Federal employees who die before attaining age for deferred annuity under civil service retirement system.
 Sec. 302. Court orders relating to Federal retirement benefits for former spouses of Federal employees.
 Sec. 303. Interest on amounts paid to make up for certain civil service annuity benefits wrongfully denied.
 Sec. 304. Income averaging of corrected civil service annuity benefit payments.
 Sec. 305. Order of precedence for disposition of amounts remaining in the thrift savings account of a Federal employee (or former employee) who dies before making an effective election controlling such disposition.

Subtitle B—Railroad Retirement

- Sec. 311. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
 Sec. 312. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

TITLE IV—MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS

- Sec. 401. Modifications of joint and survivor annuity requirements.

TITLE V—PLAN AMENDMENTS

- Sec. 501. Provisions relating to plan amendments.

1 **TITLE I—SPOUSAL CONSENT RE-**
 2 **QUIRED FOR DISTRIBUTIONS**
 3 **FROM DEFINED CONTRIBU-**
 4 **TION PLANS**

5 **SEC. 101. APPLICATION OF JOINT AND SURVIVOR ANNUITY**
 6 **RULES TO ALL DEFINED CONTRIBUTION**
 7 **PLANS.**

8 (a) APPLICATION TO ALL DEFINED CONTRIBUTION
 9 PLANS.—

10 (1) AMENDMENTS TO ERISA.—

11 (A) IN GENERAL.—Section 205(a) of the
 12 Employee Retirement Income Security Act of
 13 1974 (29 U.S.C. 1055(a)) is amended by strik-
 14 ing “to which this section applies”.

15 (B) CONFORMING AMENDMENTS.—

16 (i) Section 205(b) of such Act (29
 17 U.S.C. 1055(b)) is amended to read as fol-
 18 lows:

19 “(b)(1)(A) In the case of—

20 “(i) a tax credit employee stock ownership plan
 21 (as defined in section 409(a) of the Internal Rev-
 22 enue Code of 1986), or

23 “(ii) an employee stock ownership plan (as de-
 24 fined in section 4975(e)(7) of such Code),

1 subsection (a) shall not apply to that portion of the em-
2 ployee's accrued benefit to which the requirements of sec-
3 tion 409(h) of such Code apply.

4 “(B) Subparagraph (A) shall apply with respect to
5 any participant only if—

6 “(i) such plan provides that the participant's
7 nonforfeitable accrued benefit (reduced by any secu-
8 rity interest held by the plan by reason of a loan
9 outstanding to such participant) is payable in full,
10 on the death of the participant, to the participant's
11 surviving spouse (or, if there is no surviving spouse
12 or the surviving spouse consents in the manner re-
13 quired under subsection (c)(2), to a designated bene-
14 ficiary),

15 “(ii) such participant does not elect the pay-
16 ment of benefits in the form of a life annuity, and

17 “(iii) with respect to such participant, such
18 plan is not a direct or indirect transferee (in a
19 transfer after December 31, 1984) of a plan to
20 which, at the time of the transfer, subsection (a) ap-
21 plied (or to which this clause applied with respect to
22 the participant).

23 Clause (iii) shall apply only with respect to the transferred
24 assets (and income therefrom) if the plan separately ac-
25 counts for such assets and any income therefrom. A plan

1 shall not be treated as failing to meet the requirements
 2 of this subparagraph merely because the plan provides
 3 that benefits will not be payable to the surviving spouse
 4 of the participant unless the participant and such spouse
 5 had been married throughout the 1-year period ending on
 6 the earlier of the participant’s annuity starting date or
 7 the date of the participant’s death.

8 “(2) This section shall not apply to a plan which the
 9 Secretary of the Treasury or his delegate has determined
 10 is a plan described in section 404(c) of the Internal Rev-
 11 enue Code of 1986 (or a continuation thereof) in which
 12 participation is substantially limited to individuals who,
 13 before January 1, 1976, ceased employment covered by
 14 the plan.”

15 (ii) Section 205(e)(2) of such Act (20
 16 U.S.C. 1055(e)(2)) is amended—

17 (I) by striking “individual ac-
 18 count plan or participant described in
 19 subparagraph (B) or (C) of subsection
 20 (b)(1)” and inserting “individual ac-
 21 count plan to which this section ap-
 22 plies, or any participant described in
 23 subsection (b)(1)(B)”, and

24 (II) by striking “50 percent of”.

1 (2) AMENDMENTS TO INTERNAL REVENUE
2 CODE.—

3 (A) IN GENERAL.—Section 401(a)(11)(A)
4 of the Internal Revenue Code of 1986 (relating
5 to requirement of joint and survivor annuity
6 and preretirement survivor annuity) is amended
7 by striking the matter preceding clause (i) and
8 inserting:

9 “(A) IN GENERAL.—Except as provided in
10 section 417 and subparagraph (B), a trust
11 forming part of a plan shall not constitute a
12 qualified trust under this section unless such
13 plan provides—”.

14 (B) CONFORMING AMENDMENTS.—

15 (i) Section 401(a)(11) of such Code is
16 amended by striking subparagraphs (B),
17 (C), and (D) and inserting the following
18 new subparagraphs:

19 “(B) EXCEPTION FOR CERTAIN ESOP BEN-
20 EFITS.—

21 “(i) IN GENERAL.—In the case of—

22 “(I) a tax credit employee stock
23 ownership plan (as defined in section
24 409(a)), or

1 “(II) an employee stock owner-
2 ship plan (as defined in section
3 4975(e)(7)),
4 subparagraph (A) shall not apply to that
5 portion of the employee’s accrued benefit
6 to which the requirements of section
7 409(h) apply.

8 “(ii) NONFORFEITABLE BENEFIT
9 MUST BE PAID IN FULL, ETC.—In the case
10 of any participant, clause (i) shall apply
11 only if—

12 “(I) such plan provides that the
13 participant’s nonforfeitable accrued
14 benefit (reduced by any security inter-
15 est held by the plan by reason of a
16 loan outstanding to such participant)
17 is payable in full, on the death of the
18 participant, to the participant’s sur-
19 viving spouse (or, if there is no sur-
20 viving spouse or the surviving spouse
21 consents in the manner required
22 under section 417(a)(2), to a des-
23 ignated beneficiary),

1 “(II) such participant does not
 2 elect the payment of benefits in the
 3 form of a life annuity, and

4 “(III) with respect to such par-
 5 ticipant, such plan is not a direct or
 6 indirect transferee (in a transfer after
 7 December 31, 1984) of a plan to
 8 which, at the time of the transfer,
 9 subparagraph (A) applied (or to which
 10 this subclause applied with respect to
 11 the participant).

12 Subclause (III) shall apply only with re-
 13 spect to the transferred assets (and income
 14 therefrom) if the plan separately accounts
 15 for such assets and any income therefrom.

16 “(C) SPECIAL RULE WHERE PARTICIPANT
 17 AND SPOUSE MARRIED LESS THAN 1 YEAR.—A
 18 plan shall not be treated as failing to meet the
 19 requirements of subparagraph (B)(ii) merely
 20 because the plan provides that benefits will not
 21 be payable to the surviving spouse of the partic-
 22 ipant unless the participant and such spouse
 23 had been married throughout the 1-year period
 24 ending on the earlier of the participant’s annu-

ity starting date or the date of the participant’s death.”

(ii) Section 401(a)(11) of such Code is amended by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively.

(iii) Section 417(c)(2) of such Code is amended—

(I) by striking “defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B)” and inserting “defined contribution plan to which section 401(a)(11) applies, or any participant described in section 401(a)(11)(B)(ii),”; and

(II) by striking “50 percent of”.

(b) SPECIAL RULES RELATING TO DEFINED CONTRIBUTION PLANS.—

(1) AMENDMENTS TO ERISA.—

(A) LOANS.—Section 205(c)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(4)) is amended by adding at the end the following flush sentence:

1 “This paragraph shall not apply to an individual account
2 plan other than a plan which is subject to the funding
3 standards of section 302.”

4 (B) HARDSHIP WITHDRAWALS.—Section
5 205(c) of such Act (29 U.S.C. 1055(c)) is
6 amended by adding at the end the following
7 new paragraph:

8 “(9) Nothing in this section shall be construed as re-
9 quiring an individual account plan to obtain the consent
10 of the spouse of a participant before making a hardship
11 distribution to the participant.”

12 (C) PAYMENTS IN LIEU OF ANNUITY.—
13 Section 205 of such Act (29 U.S.C. 1055) is
14 amended by redesignating subsection (l) as sub-
15 section (m) and by inserting after subsection
16 (k) the following new subsection:

17 “(l)(1) For purposes of this section, an individual ac-
18 count plan required to provide a qualified joint and sur-
19 vivor annuity or a qualified preretirement survivor annuity
20 shall be treated as providing—

21 “(A) a qualified joint and survivor annuity if
22 the plan provides that the account balance of the
23 participant to which the participant had a non-
24 forfeitable right (within the meaning of section 203)
25 will be distributed in a series of periodic payments

1 (determined in accordance with tables prescribed by
2 the Secretary of the Treasury) over the joint life ex-
3 pectancy of the participant and the participant's
4 spouse, and

5 “(B) a qualified preretirement survivor annuity
6 if the plan provides that the account balance of the
7 participant (as of the date of death) to which the
8 participant had a nonforfeitable right (as so defined)
9 will be distributed to the surviving spouse, at the op-
10 tion of the spouse, in either such a series of periodic
11 payments over the life expectancy of the surviving
12 spouse or any other form of benefit payment that
13 the plan provides.

14 A plan shall not be treated as failing to meet the require-
15 ments of subparagraph (A) because the plan provides that
16 a participant may, with the consent of the spouse, elect
17 at any time to have the plan pay all of the remaining por-
18 tion of the account balance in any other form of benefit
19 payment that the plan provides.

20 “(2) In the case of a termination of an individual ac-
21 count plan that provides for payments described in para-
22 graph (1), such plan shall be treated as meeting the re-
23 quirements of paragraph (1) only if, for each participant
24 or surviving spouse eligible to receive such payments who
25 is not paid the remaining account balance in a lump sum,

1 the plan administrator purchases from an insurer an irrev-
 2 ocable commitment to provide—

3 “(A) the payments described in paragraph (1),

4 or

5 “(B) either—

6 “(i) a qualified joint and survivor annuity

7 (and, if applicable, a qualified preretirement

8 survivor annuity) in the case of a participant,

9 or

10 “(ii) a single life annuity or qualified pre-

11 retirement survivor annuity, whichever is appli-

12 cable, in the case of a surviving spouse of a

13 participant.

14 “(3) The requirements of paragraph (2) are met with

15 respect to a purchase only if, within a reasonable time

16 after the effective date of the purchase, the individual enti-

17 tled to payments from the insurer is provided a copy of

18 the insurance contract or a certificate showing the insur-

19 er’s name and address and clearly stating the insurer’s

20 obligation to provide the required payments.”.

21 (D) CONFORMING AMENDMENT.—Section

22 206 of such Act (29 U.S.C. 1056) is amended

23 by adding at the end the following:

24 “(g) FINAL DISTRIBUTIONS FROM TERMINATED IN-

25 DIVIDUAL ACCOUNT PLANS.—In the case of an individual

1 account plan which provides for payments described in
 2 section 205(l)(1), the plan shall provide that, upon termi-
 3 nation of such plan, benefits of married participants and
 4 surviving spouses shall be paid in accordance with section
 5 205(l)(2).”.

6 (2) AMENDMENTS TO INTERNAL REVENUE
 7 CODE.—

8 (A) LOANS.—Section 417(a)(4) of the In-
 9 ternal Revenue Code of 1986 is amended by
 10 adding at the end the following flush sentence:
 11 “This paragraph shall not apply to a defined con-
 12 tribution plan other than a plan which is subject to
 13 the funding standards of section 412.”

14 (B) HARDSHIP WITHDRAWALS.—Section
 15 417(a) of such Code is amended by adding at
 16 the end the following new paragraph:

17 “(8) HARDSHIP DISTRIBUTIONS.—Nothing in
 18 this section or section 401(a)(11) shall be construed
 19 as requiring a defined contribution plan to obtain
 20 the consent of the spouse of a participant before
 21 making a hardship distribution to the participant.”

22 (C) PAYMENTS IN LIEU OF ANNUITY.—
 23 Section 417 of such Code (relating to defini-
 24 tions and special rules for purposes of minimum

1 survivor annuity requirements) is amended by
2 adding at the end the following new subsection:

3 “(g) SPECIAL RULES FOR DEFINED CONTRIBUTION
4 PLANS.—For purposes of this section and section
5 401(a)(11)—

6 “(1) PAYMENTS IN LIEU OF ANNUITIES.—A de-
7 fined contribution plan required to provide a quali-
8 fied joint and survivor annuity or a qualified pre-
9 retirement survivor annuity shall be treated as
10 providing—

11 “(A) a qualified joint and survivor annuity
12 if the plan provides that the account balance of
13 the participant to which the participant had a
14 nonforfeitable right (within the meaning of sec-
15 tion 411(a)) will be distributed in a series of
16 periodic payments (determined in accordance
17 with tables prescribed by the Secretary) over
18 the joint life expectancy of the participant and
19 the participant’s spouse, and

20 “(B) a qualified preretirement survivor an-
21 nuity if the plan provides that the account bal-
22 ance of the participant (as of the date of death)
23 to which the participant had a nonforfeitable
24 right (as so defined) will be distributed to the
25 surviving spouse, at the option of the spouse, in

1 either such a series of periodic payments over
 2 the life expectancy of the surviving spouse or
 3 any other form of benefit payment that the plan
 4 provides.

5 A plan shall not be treated as failing to meet the re-
 6 quirements of subparagraph (A) because the plan
 7 provides that a participant may, with the consent of
 8 the spouse, elect at any time to have the plan pay
 9 all of the remaining portion of the account balance
 10 in any other form of benefit payment that the plan
 11 provides.

12 “(2) TERMINATING PLANS.—In the case of a
 13 termination of a defined contribution plan that pro-
 14 vides for payments described in paragraph (1), such
 15 plan shall be treated as meeting the requirements of
 16 paragraph (1) only if, for each participant or sur-
 17 viving spouse eligible to receive such payments who
 18 is not paid the remaining account balance in a lump
 19 sum, the plan administrator purchases from an in-
 20 surer an irrevocable commitment to provide—

21 “(A) the payments described in paragraph
 22 (1), or

23 “(B) either—

24 “(i) a qualified joint and survivor an-
 25 nuity (and, if applicable, a qualified pre-

1 retirement survivor annuity) in the case of
2 a participant, or

3 “(ii) a single life annuity or qualified
4 preretirement survivor annuity, whichever
5 is applicable, in the case of a surviving
6 spouse of a participant.

7 “(3) NOTICE.—The requirements of paragraph
8 (2) are met with respect to a purchase only if, with-
9 in a reasonable time after the effective date of the
10 purchase, the individual entitled to payments from
11 the insurer is provided a copy of the insurance con-
12 tract or a certificate showing the insurer’s name and
13 address and clearly stating the insurer’s obligation
14 to provide the required payments.”.

15 (D) CONFORMING AMENDMENT.—Section
16 401(a) of such Code (relating to requirements
17 for a qualified trust) is amended by inserting
18 after paragraph (34) the following new para-
19 graph:

20 “(35) FINAL DISTRIBUTIONS FROM TERMI-
21 NATED DEFINED CONTRIBUTION PLANS.—In the
22 case of a defined contribution plan which provides
23 for payments described in section 417(g)(1), a trust
24 forming part of such plan shall not be treated as
25 failing to constitute a qualified trust under this sec-

1 tion merely because the pension plan of which such
 2 trust is a part pays, upon its termination, benefits
 3 in accordance with section 417(g)(2).”

4 (c) TRANSFERS BETWEEN PLANS.—

5 (1) AMENDMENT TO ERISA.—Section 205(c) of
 6 the Employee Retirement Income Security Act of
 7 1974 (29 U.S.C. 1055(c)), as amended by this Act,
 8 is amended by adding at the end the following new
 9 paragraph:

10 “(10) Nothing in this section shall be treated as re-
 11 quiring a plan to obtain the consent of the spouse of the
 12 participant before making a direct trustee-to-trustee
 13 transfer of any portion of the balance to the credit of the
 14 participant to another pension plan if the other plan is
 15 a plan to which this section applies.”

16 (2) AMENDMENT TO INTERNAL REVENUE
 17 CODE.—Section 417(a) of the Internal Revenue
 18 Code of 1986, as amended by this Act, is amended
 19 by adding at the end the following new paragraph:

20 “(9) TRANSFERS.—Nothing in this section or
 21 section 401(a)(11) shall be treated as requiring a
 22 plan to obtain the consent of the spouse of the par-
 23 ticipant before making a direct trustee-to-trustee
 24 transfer of any portion of the balance to the credit
 25 of the participant to another plan if the other plan

1 is a plan to which this section and section
2 401(a)(11) apply.”

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to plan years beginning after December
7 31, 2002.

8 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
9 GAINED PLANS.—In the case of a plan maintained
10 pursuant to 1 or more collective bargaining agree-
11 ments between employee representatives and 1 or
12 more employers ratified on or before the date of the
13 enactment of this Act, the amendments made by this
14 section shall not, in the case of employees covered by
15 any such agreement, apply to plan years beginning
16 before the earlier of—

17 (A) the later of—

18 (i) January 1, 2003, or

19 (ii) the date on which the last of such
20 collective bargaining agreements termi-
21 nates (determined without regard to any
22 extension thereof after the date of enact-
23 ment of this Act), or

24 (B) January 1, 2004.

1 (3) 1 HOUR OF SERVICE REQUIREMENT.—The
 2 amendments made by this section shall apply only in
 3 the case of participants who have at least 1 hour of
 4 service under the plan on or after the date of the en-
 5 actment of this Act or who have at least 1 hour of
 6 paid leave on or after such date.

7 **TITLE II—DIVISION OF PENSION** 8 **BENEFITS UPON DIVORCE**

9 **SEC. 201. TREATMENT OF SUBSEQUENT QUALIFIED DOMES-** 10 **TIC RELATIONS ORDERS.**

11 (a) AMENDMENT TO ERISA.—Section 206(d)(3)(B)
 12 of the Employee Retirement Income Security Act of 1974
 13 (29 U.S.C. 1056(d)(3)(B)) is amended by adding at the
 14 end the following flush sentence:

15 “A domestic relations order shall be treated as a
 16 qualified domestic relations order even if it is issued
 17 after, or revises, another domestic relations order,
 18 but, subject to subparagraph (H), only with respect
 19 to amounts payable after the date the order is
 20 issued.”

21 (b) AMENDMENT TO INTERNAL REVENUE CODE.—
 22 Section 414(p)(1)(A) of the Internal Revenue Code of
 23 1986 is amended by adding at the end the following flush
 24 sentence:

1 “A domestic relations order shall be treated as
 2 a qualified domestic relations order even if it is
 3 issued after, or revises, another domestic rela-
 4 tions order, but, subject to paragraph (7), only
 5 with respect to amounts payable after the date
 6 the order is issued.”

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to transfers made after December
 9 31, 2002.

10 **SEC. 202. FORMER SPOUSES TREATED AS SURVIVING**
 11 **SPOUSES IN CERTAIN CASES.**

12 (a) AMENDMENT TO ERISA.—Section 205 of the
 13 Employee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1055), as amended by this Act, is amended by re-
 15 designating subsection (m) as subsection (n) and by in-
 16 serting after subsection (l) the following new subsection:

17 “(m)(1) For purposes of this section, a former spouse
 18 to whom this subsection applies shall, upon the death of
 19 the participant to whom the former spouse was married,
 20 be entitled to receive a qualified joint and survivor annuity
 21 or qualified preretirement survivor annuity in the same
 22 manner, and to the same extent, as if the former spouse
 23 were the surviving spouse of the participant.

24 “(2) This subsection applies to a former spouse of
 25 a participant if—

1 “(A) the former spouse was married to the par-
2 ticipant for at least 1 year,

3 “(B) an election by the former spouse to waive
4 the benefits of this section was not in effect at the
5 time of the dissolution of the marriage,

6 “(C) there is no domestic relations order which
7 specifically provides that the survivor benefits under
8 the plan were considered by the participant and the
9 former spouse and that the survivor benefits were
10 disposed of, and

11 “(D) the requirements of paragraph (3) are
12 met with respect to the participant.

13 “(3)(A) The requirements of this paragraph are met
14 with respect to a participant if the participant did not at
15 any time after dissolution of the marriage to the former
16 spouse—

17 “(i) remarry, or

18 “(ii) make a subsequent beneficiary designation.

19 “(B) A participant shall not be treated as having
20 made a subsequent beneficiary designation under subpara-
21 graph (A)(ii) if, at the time of the death of the
22 participant—

23 “(i) the participant had accepted a reduction in
24 an annuity in order to provide a qualified joint and
25 survivor annuity under this section, or

1 “(ii) the participant was eligible for a fully sub-
2 sidized annuity described in subsection (c)(5) which
3 provides a qualified joint and survivor annuity or
4 qualified preretirement survivor annuity.

5 “(4) This subsection shall not apply to a former
6 spouse unless the spouse notifies the plan of the spouse’s
7 eligibility under this subsection and provides such infor-
8 mation as is necessary to establish such eligibility.”

9 (b) AMENDMENT TO INTERNAL REVENUE CODE.—
10 Section 417 of the Internal Revenue Code of 1986 (relat-
11 ing to definitions and special rules for purposes of min-
12 imum survivor annuity requirements), as amended by this
13 Act, is amended by adding at the end the following new
14 subsection:

15 “(h) TREATMENT OF CERTAIN FORMER SPOUSES.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion and section 401(a)(11), a former spouse to
18 whom this subsection applies shall, upon the death
19 of the participant to whom the former spouse was
20 married, be entitled to receive a qualified joint and
21 survivor annuity or qualified preretirement survivor
22 annuity in the same manner, and to the same ex-
23 tent, as if the former spouse were the surviving
24 spouse of the participant.

1 “(2) APPLICATION.—This subsection applies to
2 a former spouse of a participant if—

3 “(A) the former spouse was married to the
4 participant for at least 1 year,

5 “(B) an election by the former spouse to
6 waive the benefits of this section and section
7 401(a)(11) was not in effect at the time of the
8 dissolution of the marriage,

9 “(C) there is no domestic relations order
10 which specifically provides that the survivor
11 benefits under the plan were considered by the
12 participant and the former spouse and that the
13 survivor benefits were disposed of, and

14 “(D) the requirements of paragraph (3)
15 are met with respect to the participant.

16 “(3) PARTICIPANT REQUIREMENTS.—

17 “(A) IN GENERAL.—The requirements of
18 this paragraph are met with respect to a partic-
19 ipant if the participant did not at any time
20 after dissolution of the marriage to the former
21 spouse—

22 “(i) remarry, or

23 “(ii) make a subsequent beneficiary
24 designation.

1 “(B) SPECIAL RULES.—A participant shall
 2 not be treated as having made a subsequent
 3 beneficiary designation under subparagraph
 4 (A)(ii) if, at the time of the death of the
 5 participant—

6 “(i) the participant had accepted a re-
 7 duction in an annuity in order to provide
 8 a qualified joint and survivor annuity
 9 under this section, or

10 “(ii) the participant was eligible for a
 11 fully subsidized annuity described in sub-
 12 section (c)(5) which provides a qualified
 13 joint and survivor annuity or qualified pre-
 14 retirement survivor annuity.

15 “(4) NOTICE.—This subsection shall not apply
 16 to a former spouse unless the spouse notifies the
 17 plan of the spouse’s eligibility under this subsection
 18 and provides such information as is necessary to es-
 19 tablish such eligibility.”

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as provided in para-
 22 graph (2), the amendments made by this section
 23 shall apply to benefits which first become payable
 24 (without regard to when the participant died) in
 25 plan years beginning after December 31, 2002.

1 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
2 GAINED PLANS.—In the case of a plan maintained
3 pursuant to 1 or more collective bargaining agree-
4 ments between employee representatives and 1 or
5 more employers ratified on or before the date of the
6 enactment of this Act, the amendments made by this
7 section shall not, in the case of employees covered by
8 any such agreement, apply to benefits which first be-
9 come payable (without regard to when the partici-
10 pant died) in plan years beginning before the earlier
11 of—

12 (A) the later of—

13 (i) January 1, 2003, or

14 (ii) the date on which the last of such
15 collective bargaining agreements termi-
16 nates (determined without regard to any
17 extension thereof after the date of enact-
18 ment of this Act), or

19 (B) January 1, 2004.

1 **TITLE III—PROTECTION OF**
 2 **RIGHTS OF FORMER SPOUSES**
 3 **TO PENSION BENEFITS**
 4 **UNDER CERTAIN GOVERN-**
 5 **MENT AND GOVERNMENT-**
 6 **SPONSORED RETIREMENT**
 7 **PROGRAMS**

8 **Subtitle A—Civil Service**
 9 **Retirement**

10 **SEC. 301. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
 11 **AND FORMER SPOUSES OF FEDERAL EM-**
 12 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
 13 **FOR DEFERRED ANNUITY UNDER CIVIL**
 14 **SERVICE RETIREMENT SYSTEM.**

15 (a) **BENEFITS FOR WIDOW OR WIDOWER.**—Section
 16 8341(f) of title 5, United States Code, is amended—

17 (1) in the matter preceding paragraph (1)—

18 (A) by inserting “a former employee sepa-
 19 rated from the service with title to deferred an-
 20 nuity from the Fund dies before having estab-
 21 lished a valid claim for annuity and is survived
 22 by a spouse, or if” before “a Member”; and

23 (B) by inserting “of such former employee
 24 or Member” after “the surviving spouse”;

25 (2) in paragraph (1)—

1 (A) by inserting “former employee or” be-
 2 fore “Member commencing”; and

3 (B) by inserting “former employee or” be-
 4 fore “Member dies”; and

5 (3) in the undesignated sentence following para-
 6 graph (2)—

7 (A) in the matter preceding subparagraph
 8 (A), by inserting “former employee or” before
 9 “Member”; and

10 (B) in subparagraph (B), by inserting
 11 “former employee or” before “Member”.

12 (b) BENEFITS FOR FORMER SPOUSE.—Section
 13 8341(h) of title 5, United States Code, is amended—

14 (1) in paragraph (1), by adding after the first
 15 sentence “Subject to paragraphs (2) through (5) of
 16 this subsection, a former spouse of a former em-
 17 ployee who dies after having separated from the
 18 service with title to a deferred annuity under section
 19 8338(a) but before having established a valid claim
 20 for annuity is entitled to a survivor annuity under
 21 this subsection, if and to the extent expressly pro-
 22 vided for in an election under section 8339(j)(3) of
 23 this title, or in the terms of any decree of divorce
 24 or annulment or any court order or court-approved

1 property settlement agreement incident to such de-
 2 cree.”; and

3 (2) in paragraph (2)—

4 (A) in subparagraph (A)(ii), by striking
 5 “or annuitant,” and inserting “annuitant, or
 6 former employee”; and

7 (B) in subparagraph (B)(iii), by inserting
 8 “former employee or” before “Member”.

9 (c) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
 10 Section 8339(j)(3) of title 5, United States Code, is
 11 amended by inserting at the end the following:

12 “The Office shall provide by regulation for the appli-
 13 cation of this subsection to the widow, widower, or sur-
 14 viving former spouse of a former employee who dies after
 15 having separated from the service with title to a deferred
 16 annuity under section 8338(a) but before having estab-
 17 lished a valid claim for annuity.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall take effect on the date of the enactment
 20 of this Act and shall apply only in the case of a former
 21 employee who dies on or after such date.

22 **SEC. 302. COURT ORDERS RELATING TO FEDERAL RETIRE-**
 23 **MENT BENEFITS FOR FORMER SPOUSES OF**
 24 **FEDERAL EMPLOYEES.**

25 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

1 (1) IN GENERAL.—Section 8345(j) of title 5,
2 United States Code, is amended—

3 (A) by redesignating paragraph (3) as
4 paragraph (4); and

5 (B) by inserting after paragraph (2) the
6 following:

7 “(3) Payment to a person under a court decree, court
8 order, property settlement, or similar process referred to
9 under paragraph (1) shall include payment to a former
10 spouse of the employee, Member, or annuitant.”.

11 (2) LUMP-SUM BENEFITS.—Section 8342 of
12 title 5, United States Code, is amended—

13 (A) in subsection (c), by striking “Lump-
14 sum benefits” and inserting “Subject to sub-
15 section (j), lump-sum benefits”; and

16 (B) in subsection (j)(1)(A), by striking
17 “the lump-sum credit under subsection (a)” and
18 inserting “any lump-sum credit or lump-sum
19 benefit under this section”.

20 (b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—
21 Section 8467 of title 5, United States Code, is amended—

22 (1) by redesignating subsection (c) as sub-
23 section (d); and

24 (2) by inserting after subsection (b) the fol-
25 lowing:

1 “(c) Payment to a person under a court decree, court
 2 order, property settlement, or similar process referred to
 3 under subsection (a) shall include payment to a former
 4 spouse of the employee, Member, or annuitant.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect on the date of the enactment
 7 of this Act.

8 **SEC. 303. INTEREST ON AMOUNTS PAID FOR CERTAIN CIVIL**
 9 **SERVICE ANNUITY BENEFITS WRONGFULLY**
 10 **DENIED.**

11 (a) IN GENERAL.—Chapter 77 of title 5, United
 12 States Code, is amended by adding at the end the fol-
 13 lowing:

14 **“§ 7704. Interest on amounts paid for certain annuity**
 15 **benefits wrongfully denied**

16 “(a) In the case of an individual who, on the basis
 17 of a timely appeal to the Merit Systems Protection Board
 18 under section 8347(d) or 8461(e), or petition for judicial
 19 review under section 7703 from a final order or decision
 20 of the Board in any such appeal, is found by the relevant
 21 authority—

22 “(1) to have been affected by an erroneous ap-
 23 plication or interpretation of subchapter III of chap-
 24 ter 83, chapter 84, or any other provision of law (or
 25 any rule or regulation relating thereto), and

1 “(2) to be entitled to receive an amount equal
 2 to all or any part of an annuity not paid to such in-
 3 dividual as a result of such erroneous application or
 4 interpretation,
 5 the amount under paragraph (2) may, in the discretion
 6 of such authority, be made payable with interest.

7 “(b) Any such interest—

8 “(1) shall be computed in such manner as the
 9 Merit Systems Protection Board or the court (as the
 10 case may be) considers appropriate; and

11 “(2) shall be payable out of the Civil Service
 12 Retirement and Disability Fund.

13 “(c) In this section, the term ‘annuity’ means any
 14 annuity (including a survivor annuity) payable out of the
 15 Civil Service Retirement and Disability Fund.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 8348(a)(1)(A) of title 5, United
 18 States Code, is amended by striking “Fund;” and
 19 inserting “Fund (including any interest payable
 20 under section 7704);”.

21 (2) The table of sections for chapter 77 of title
 22 5, United States Code, is amended by adding at the
 23 end the following:

“7704. Interest on amounts paid for certain annuity benefits wrongfully de-
 nied.”.

1 **SEC. 304. INCOME AVERAGING OF CORRECTED CIVIL SERV-**
 2 **ICE ANNUITY BENEFIT PAYMENTS.**

3 (a) IN GENERAL.—Part I of subchapter Q of chapter
 4 1 of the Internal Revenue Code of 1986 (relating to in-
 5 come averaging) is amended by inserting after section
 6 1301 the following:

7 **“SEC. 1302. AVERAGING OF CORRECTED CIVIL SERVICE AN-**
 8 **NUITY BENEFIT PAYMENTS.**

9 “(a) IN GENERAL.—Unless the taxpayer elects not
 10 to have this section apply for a taxable year, any corrected
 11 civil service annuity benefit payment includible in gross
 12 income for such taxable year (without regard to this sec-
 13 tion) shall be so included ratably over the 5-taxable year
 14 period beginning with such taxable year.

15 “(b) CORRECTED CIVIL SERVICE ANNUITY BENEFIT
 16 PAYMENT.—For purposes of subsection (a), the term ‘cor-
 17 rected civil service annuity benefit payment’ means with
 18 respect to an individual the sum of—

19 “(1) the lump sum payment awarded by reason
 20 of a court order, or decision of the Merit Systems
 21 Protection Board, under which the individual is enti-
 22 tled to receive an amount equal to all or any part
 23 of an annuity not paid to the individual as a result
 24 of an erroneous application or interpretation of sub-
 25 chapter III of chapter 83 or chapter 84 of title 5,

1 United States Code, or any other provision of law
 2 (or any rule or regulation relating thereto), plus

3 “(2) interest on the amount described in para-
 4 graph (1) awarded under section 7704 of title 5,
 5 United States Code.

6 “(c) ANNUITY.—For purposes of subsection (b), the
 7 term ‘annuity’ has the meaning given to such term by sec-
 8 tion 7704(c) of title 5, United States Code.

9 “(d) FINALITY OF ELECTION.—An election under
 10 subsection (a) with respect to a corrected civil service an-
 11 nuity benefit payment for a taxable year may not be
 12 changed after the due date of the return for such taxable
 13 year.”

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for part I of subchapter Q of chapter 1 of such Code is
 16 amended by inserting after the item relating to section
 17 1301 the following:

“Sec. 1302. Averaging of corrected civil service annuity benefit
 payments.”

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to payments received after Decem-
 20 ber 31, 2002.

1 **SEC. 305. ORDER OF PRECEDENCE FOR DISPOSITION OF**
 2 **AMOUNTS REMAINING IN THE THRIFT SAV-**
 3 **INGS ACCOUNT OF A FEDERAL EMPLOYEE**
 4 **(OR FORMER EMPLOYEE) WHO DIES BEFORE**
 5 **MAKING AN EFFECTIVE ELECTION CONTROL-**
 6 **LING SUCH DISPOSITION.**

7 (a) IN GENERAL.—Section 8433(e) of title 5, United
 8 States Code, is amended—

9 (1) by striking “(e)” and inserting “(e)(1)”;

10 (2) by striking all that follows “paid” and in-
 11 serting “in accordance with paragraph (2).”; and

12 (3) by adding at the end the following:

13 “(2)(A) An amount under paragraph (1) shall be paid
 14 in a manner consistent with the provisions of section
 15 8424(d), except that, in applying the order of precedence
 16 under such provisions—

17 “(i) the widow or widower of the decedent shall
 18 be the first party entitled to receive (instead of any
 19 designated beneficiary); and

20 “(ii) if there is no widow or widower, the party
 21 next entitled to receive shall be the beneficiary or
 22 beneficiaries designated by the employee or Member
 23 (or former employee or Member) in accordance with
 24 the procedures that would otherwise normally apply,
 25 subject to such additional conditions as the Execu-
 26 tive Director shall by regulation prescribe based on

1 section 205(c)(2) of the Employee Retirement In-
 2 come Security Act of 1974 (29 U.S.C. 1055(c)(2)).

3 “(B) The order of precedence under subparagraph
 4 (A) shall not apply if the widow or widower consents in
 5 writing to the application of the order of precedence under
 6 section 8424(d).”

7 (b) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on the 90th day after the
 9 date of the enactment of this Act, and shall apply in the
 10 case of any individual who dies on or after such 90th day.

11 **Subtitle B—Railroad Retirement**

12 **SEC. 311. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 13 **ROAD RETIREMENT ANNUITIES INDE-** 14 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 15 **PLOYEE.**

16 Section 2 of the Railroad Retirement Act of 1974 (45
 17 U.S.C. 231a) is amended—

18 (1) in subsection (c)(4)(i), by striking “(A) is
 19 entitled to an annuity under subsection (a)(1) and
 20 (B)”;

21 (2) in subsection (e)(5), by striking “or di-
 22 vorced wife” the second place it appears.

1 **SEC. 312. EXTENSION OF TIER II RAILROAD RETIREMENT**
 2 **BENEFITS TO SURVIVING FORMER SPOUSES**
 3 **PURSUANT TO DIVORCE AGREEMENTS.**

4 (a) IN GENERAL.—Section 5 of the Railroad Retire-
 5 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
 6 at the end the following:

7 “(d) Notwithstanding any other provision of law, the
 8 payment of any portion of an annuity computed under sec-
 9 tion 3(b) to a surviving former spouse in accordance with
 10 a court decree of divorce, annulment, or legal separation
 11 or the terms of any court-approved property settlement
 12 incident to any such court decree shall not be terminated
 13 upon the death of the individual who performed the service
 14 with respect to which such annuity is so computed unless
 15 such termination is otherwise required by the terms of
 16 such court decree.”

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall take effect on the date of the enactment
 19 of this Act.

20 **TITLE IV—MODIFICATIONS OF**
 21 **JOINT AND SURVIVOR ANNU-**
 22 **ITY REQUIREMENTS**

23 **SEC. 401. MODIFICATIONS OF JOINT AND SURVIVOR ANNU-**
 24 **ITY REQUIREMENTS.**

25 (a) AMENDMENTS TO ERISA.—

26 (1) AMOUNT OF ANNUITY.—

(A) IN GENERAL.—Paragraph (1) of section 205(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(a)) is amended by inserting “or, at the election of the participant, shall be provided in the form of a qualified joint and $\frac{3}{4}$ survivor annuity,” after “survivor annuity,”.

(B) DEFINITION.—Subsection (d) of section 205 of such Act (29 U.S.C. 1055) is amended—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(ii) by inserting “(1)” after “(d)”, and

(iii) by adding at the end the following new paragraph:

“(2)(A) For purposes of this section, the term “qualified joint and $\frac{3}{4}$ survivor annuity” means an annuity—

“(i) for the participant while both the participant and the spouse are alive with a survivor annuity for the life of surviving individual (either the participant or the spouse) equal to 75 percent of the amount of the annuity which is payable to the par-

1 participant while both the participant and the spouse
2 are alive, and

3 “(ii) which is the actuarial equivalent of a sin-
4 gle annuity for the life of the participant.

5 “(B) For purposes of this Act, a qualified joint and
6 $\frac{3}{4}$ survivor annuity shall be treated as a qualified joint
7 and survivor annuity.”.

8 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
9 of section 205(c)(3)(A) of such Act (29 U.S.C.
10 1055(c)(3)(A)) is amended to read as follows:

11 “(i) the terms and conditions of each qualified
12 joint and survivor annuity and qualified joint and $\frac{3}{4}$
13 survivor annuity offered, accompanied by an illustra-
14 tion of the benefits under each such annuity for the
15 particular participant and spouse and an acknowl-
16 edgement form to be signed by the participant and
17 the spouse that they have read and considered the
18 illustration before any form of retirement benefit is
19 chosen,”.

20 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

21 (1) AMOUNT OF ANNUITY.—

22 (A) IN GENERAL.—Clause (i) of section
23 401(a)(11)(A) at the Internal Revenue Code of
24 1986 (relating to requirement of joint and sur-
25 vivor annuity and preretirement survivor annu-

ity) is amended by inserting “or, at the election of the participant, shall be provided in the form of a qualified joint and $\frac{3}{4}$ survivor annuity,” after “survivor annuity.”

(B) DEFINITION.—Section 417 (relating to definitions and special rules for purposes of minimum survivor annuity requirements) is amended by adding at the end the following new subsection:

“(i) DEFINITION OF QUALIFIED JOINT AND $\frac{3}{4}$ SURVIVOR ANNUITY.—

“(1) IN GENERAL.—For purposes of this section and section 401(a)(11), the term “qualified joint and $\frac{3}{4}$ survivor annuity” means an annuity—

“(A) for the participant while both the participant and the spouse are alive with a survivor annuity for the life of surviving individual (either the participant or the spouse) equal to 75 percent of the amount of the annuity which is payable to the participant while both the participant and the spouse are alive, and

“(B) which is the actuarial equivalent of a single annuity for the life of the participant.

1 “(2) TREATMENT.—For purposes of this title, a
2 qualified joint and $\frac{3}{4}$ survivor annuity shall be
3 treated as a qualified joint and survivor annuity.”.

4 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
5 of section 417(a)(3)(A) (relating to explanation of
6 joint and survivor annuity) is amended to read as
7 follows:

8 “(i) the terms and conditions of each
9 qualified joint and survivor annuity and
10 qualified joint and $\frac{3}{4}$ survivor annuity of-
11 fered, accompanied by an illustration of
12 the benefits under each such annuity for
13 the particular participant and spouse and
14 an acknowledgement form to be signed by
15 the participant and the spouse that they
16 have read and considered the illustration
17 before any form of retirement benefit is
18 chosen,”.

19 (c) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall apply to plan years beginning on
22 or after January 1, 2003.

23 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
24 GAINED PLANS.—In the case of a plan maintained
25 pursuant to 1 or more collective bargaining agree-

ments between employee representatives and 1 or more employers ratified on or before the date of enactment of this Act, the amendments made by this section shall apply to the first plan year beginning on or after the earlier of—

(A) the later of—

(i) January 1, 2003, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

(B) January 1, 2004.

(3) FORM OF ACCRUED BENEFIT NOT TREATED AS DECREASED BY REASON OF AMENDMENT.—For purposes of sections 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) and 411(d)(6) of the Internal Revenue Code of 1986, a plan shall not be treated as having decreased the accrued benefit of a participant solely by reason of the adoption of a plan amendment required to carry out the amendments made by this section.

1 **TITLE V—PLAN AMENDMENTS**

2 **SEC. 501. PROVISIONS RELATING TO PLAN AMENDMENTS.**

3 (a) IN GENERAL.—If this section applies to any plan
4 or contract amendment, such plan or contract shall be
5 treated as being operated in accordance with the terms
6 of the plan during the period described in subsection
7 (b)(2)(A).

8 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

9 (1) IN GENERAL.—This section shall apply to
10 any amendment to any plan or annuity contract
11 which is made—

12 (A) pursuant to any amendment made by
13 this Act, or pursuant to any regulation issued
14 under this Act, and

15 (B) on or before the last day of the first
16 plan year beginning on or after January 1,
17 2004.

18 In the case of a governmental plan (as defined in
19 section 414(d) of the Internal Revenue Code of
20 1986), this paragraph shall be applied by sub-
21 stituting “2006” for “2004”.

22 (2) CONDITIONS.—This section shall not apply
23 to any amendment unless—

24 (A) during the period—

1 (i) beginning on the date the legisla-
2 tive or regulatory amendment described in
3 paragraph (1)(A) takes effect (or in the
4 case of a plan or contract amendment not
5 required by such legislative or regulatory
6 amendment, the effective date specified by
7 the plan); and

8 (ii) ending on the date described in
9 paragraph (1)(B) (or, if earlier, the date
10 the plan or contract amendment is adopt-
11 ed),

12 the plan or contract is operated as if such plan
13 or contract amendment were in effect; and

14 (B) such plan or contract amendment ap-
15 plies retroactively for such period.

○